

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THAL FLAM WENDROW, *et al.*,

Plaintiffs,

Case No. 08-14324

v.

Hon. John Corbett O'Meara

MICHIGAN DEPARTMENT OF
HUMAN SERVICES, *et al.*,

Defendants.

**ORDER DENYING MICHIGAN DEPARTMENT
OF HUMAN SERVICES' MOTION FOR SUMMARY JUDGMENT**

Before the court is the Michigan Department of Human Services' motion for summary judgment, which has been fully briefed. Pursuant to L.R. 7.1, the court did not hear oral argument.

The Michigan Department of Human Services ("DHS") seeks summary judgment on Plaintiffs' state constitutional claims and Persons with Disabilities Civil Rights Act claim. The court has previously ruled upon these issues and discerns no procedural or other legal basis to revisit them now. See March 30, 2011 Opinion and Order (Docket No. 288) at 18-19, 42-43; March 27, 2012 Opinion and Order (Docket No. 313) at 5-7. DHS continues to press its claim that

it is entitled to immunity with respect to Plaintiffs' state constitutional tort claim; however, the Sixth Circuit ruled in this case that "Plaintiffs sufficiently allege a constitutional tort claim for which immunity is not available for DHS under *Smith*." Wendrow v. Michigan Dept. of Human Servs., 534 Fed. Appx. 516, 526 (6th Cir. Aug. 28, 2013). Nothing in the Sixth Circuit's opinion suggests that reconsideration of the state constitutional tort claim or the PWDCRA claim is appropriate.

THEREFORE, IT IS HEREBY ORDERED that DHS's motion for summary judgment is DENIED.

s/John Corbett O'Meara
United States District Judge

Date: March 5, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, March 5, 2014, using the ECF system.

s/William Barkholz
Case Manager